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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

HECTOR ADAME	§	
and	§	
ALFREDO HINOJOSA,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. L-04-93
	§	
UETA, INC.	§	
	§	
	§	
	§	
Defendant.	§	

MEMORANDUM

Pending is Defendant's motion for summary judgment against Plaintiffs Alfredo Hinojosa and Hector Adame. (Docket Nos. 44 & 45.) Plaintiffs have responded. (Docket No. 46.)

Before considering the merits of the motion, the unusual background of Plaintiff Hinojosa's case must be addressed. Hinojosa filed two lawsuits in state court. Both were removed by Defendant to federal court. The present case was assigned to this Court. The other case, Alfredo Hinojosa v. UETA, Inc. and Tim Shipton, L-04-cv-94, was assigned to the docket of Judge Keith P. Ellison. In each case, Hinojosa appears to have alleged identical age discrimination claims regarding his termination from employment at UETA. Plaintiffs filed a motion

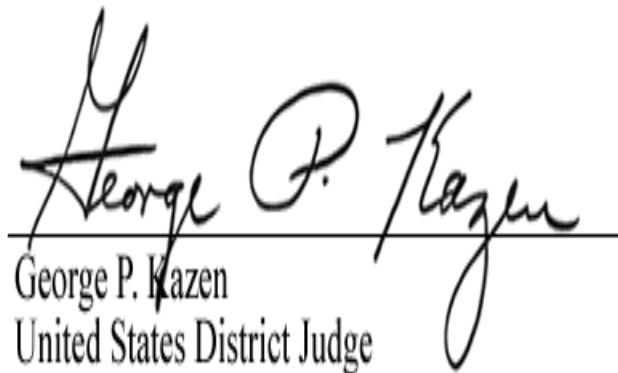
to consolidate the cases. (Docket No. 15.) However, before the Court could rule on that motion, Judge Ellison remanded 04-cv-94 to state court. This Court then found that the motion to consolidate was moot. (Docket No. 25.)

Unbeknownst to the Court, Judge Ellison subsequently vacated his remand order and found diversity jurisdiction to be present. The case was eventually assigned to the docket of Judge Micaela Alvarez. On February 23, 2005, Judge Alvarez dismissed 04-cv-94 for want of prosecution. Hinojosa has appealed that decision to the Fifth Circuit.

Since a dismissal for want of prosecution is presumptively an adjudication on the merits, see Fed. R. Civ. Pro. 41(b), that decision has the res judicata effect of barring any adjudication on Hinojosa's instant suit. See Nagle v. Lee, 807 F.2d 435 (5th Cir. 1987).

Accordingly, the most prudent thing to do at this juncture is to dismiss Hinojosa's case without prejudice, pending resolution of his appeal. If the dismissal is affirmed, his case will be terminated. If it is reversed, it will return to the docket of Judge Alvarez. In either event, there is no reason to keep it on the docket of this Court. The Court will rule on Adame's claims at a later time.

DONE at Laredo, Texas, this 25th day of April, 2005.



George P. Kazen  
United States District Judge